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THE INTERIM

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HELENA, MONTANA

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REVENUE OVERSIGHT COMMITTEE

Subcommittee Reviews Revised Revenue Estimating Schedule, Income Tax Model...The Revenue Estimating Subcommittee of the Revenue Oversight Committee met October 9 in Helena. The Subcommittee was created to look at the revenue estimating process. The goals of the Subcommittee are to improve working relationships between the legislative and executive branches, facilitate the exchange of information, and establish timelines for the development of revenue estimates.

Part of the Subcommittee's work plan includes developing recommendations to revise schedules and procedures for the preparation of revenue estimates. Clayton Schenck, Legislative Fiscal Analyst, and Dave Lewis, Director of the Office of Budget and Program Planning, presented a proposal for accelerating the exchange of revenue information between the executive and legislative branches. The proposal calls for the exchange of preliminary revenue estimates, the underlying assumptions, and supporting data for all general fund revenue components by September 20, 1998. The proposal also specifies that the Department of Revenue shall provide the latest income tax information to the Legislative Fiscal Division by October 1. In addition, executive branch and legislative branch staff will develop formal written procedures for the exchange of income tax information as well as other revenue and economic data.

The Revenue Oversight Committee is required to adopt revenue estimates by December 1 preceding the regular session. By accelerating the exchange of information between the two branches, the Committee would be able develop the revenue estimates in October rather than late November. The estimates would be available to the Governor prior to submitting the executive budget in mid-November.

One of the misapprehensions of the last legislative session was whether the income tax models could reliably forecast individual income tax revenue. Having a well-grounded understanding of the income tax model is an important goal of the Subcommittee. Terry Johnson, Principal Analyst, Legislative Fiscal Division (LFD), presented a report that described the procedures used by the LFD to forecast state income tax revenue for the 1999 biennium. Johnson discussed model variables, the

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simulation of taxpayer liabilities based on a sample of income tax data, and the conversion of calendar year liabilities to fiscal year collections. He said that, generally, the same procedures will be used to forecast income tax collections for the 2001 biennium. However, the model will be updated to incorporate changes resulting from an internal evaluation of modeling techniques and to account for changes in federal tax laws. Johnson also presented a graphic that showed that the differences between estimated income tax collections versus actual collections over that last three fiscal years has been insignificant. The executive branch has indicated that the LFD income tax model should be used by both branches, but that certain modifications to the model may be necessary.

Brenda Brenner, an economist with the Department of Revenue, presented a comparison of the LFD and executive branch income tax models. She noted that apparent "odd-ball" results can occur if different sets of assumptions are used. She also discussed several areas that the Department of Revenue believes should be addressed in the development of a single model. Revenue estimating staff will be addressing those issues during the interim.

Johnson also presented several "revenue estimating profiles". The purpose of the profiles is to show how estimates are derived for specific sources of revenue. The Subcommittee discussed ways to improve the information contained in the profiles. The Subcommittee will be reviewing revenue estimating profiles on a regular basis.

Committee Gives Tentative Approval to Electric Industry and Natural Gas Supply Industry Tax Analysis Study Plans...The Revenue Oversight Committee had a full agenda at its October 10 meeting. The Committee considered a study plan for a tax analysis of the electric industry. Senate Bill No. 390, the Electric Utility Industry and Customer Choice Act, directs the Committee to analyze the amount of revenue derived from previously regulated electricity suppliers that will enter the competitive market and to report annually to the Legislature on how revenue to the state or local governments is changed by restructuring. The Committee is also to consider recommendations, if any, that would establish comparable state and local tax burdens on all market participants in the supply of electricity. The study plan recommended, among other things, that the Committee:

- ▶ review trends in electric industry restructuring at the state and federal level;
- ▶ evaluate the relative tax contributions of the electric industry for local, school, and state purposes;
- ▶ examine the tax burden of electric utility taxation particularly for property tax purposes;
- ▶ identify legal and policy issues related to the taxation of the interstate sale of electricity; and
- ▶ develop options, if options are considered necessary, to revise the taxation of the electric industry in Montana.

The options should be evaluated using established criteria of good tax policy: adequacy of revenue, equity and fairness, economic efficiency, and simplicity.

The National Conference of State Legislatures, in conjunction with the Partnership on State and Local Taxation of the Electric Industry, is sponsoring several workshops nationwide to address regional electric industry tax policy issues facing the states. An important element of the study includes Committee participation at a regional meeting on December 11 in San Francisco.

Senate Bill No. 390 provided an allocation to the Committee to conduct the study. The Committee voted to ask that the Legislative Council approve a budget of \$15,000 to assist the Committee in its study efforts. The Council approved the request on October 13.

Senate Bill No. 396, the Natural Gas Utility Restructuring and Customer Choice Act, requires a similar tax study for the natural gas supply industry. The study plan for analyzing the taxation of natural gas suppliers contains many of the elements described in the SB 390 study plan. The Committee gave tentative approval to both plans.

Committee to Review Taxation of Intangible Property...Montana law (15-6-101, MCA) requires the taxation of all property, including intangible property, not specifically exempted. In the biennial financial compliance audit of the Department of Revenue for the period ending June 30, 1996, the Legislative Auditor noted that the Department was not specifically identifying and taxing all intangible property and recommended that the Department tax intangible property in accordance with law. The taxation of intangible property was also raised as a disclosure issue in a prior audit.

At the October 10 meeting, the Committee reviewed the auditor's findings as well as a primer on the taxation of intangible property prepared by Lee Heiman, Committee attorney. Heiman's report noted that 22 states tax intangible property to varying degrees. Montana law maintains the vestiges of a general property tax common in the 19th century that subjected all property, including intangibles, to tax. The report noted that while none of the states surrounding Montana has a general tax on intangible property, Wyoming taxes water and reservoir rights and Washington taxes computer software and fishing rights. In states taxing intangible property, most revenue comes from stocks, bonds, notes, mortgages, and other evidences of debt. In Montana, those types of intangibles have been exempt from taxation since 1979. However, other intangible property such as patents, copyrights, franchises, and liquor licenses are subject to property taxation. The report said that intangible property does not generate much revenue and that it is easy to conceal and is difficult to identify. The report indicated that the most prudent way to tax intangible property would be to tax only intangible properties that are specifically provided by law and to tax indirectly all other intangible property that increases the value of tangible property.

In response to the legislative audit, Mary Bryson, Director, Department of Revenue, said that the Department is developing procedures to value and tax intangible property. The Department intends to identify intangible property, establish valuation methods, and adopt rules. Bryson emphasized that it would be impractical to assess intangible property for taxation before tax year 1999. Owners of intangible property

and the Legislature would have ample opportunity to participate in the process. The Committee adopted a motion offered by Rep. Chase Hibbard to direct the Department to identify, but not value, the various types intangible property and to request Committee staff to prepare draft legislation that would exempt intangible property from taxation unless specifically included in a class of property.

Top of the Ninth Inning for Crow Coal Severance Tax Dispute...The Crow Indian Tribe and the state of Montana will have their last at-bats before the U.S. Supreme Court early next year to resolve a 19-year dispute involving \$58.2 million in coal severance taxes and coal gross proceeds taxes illegally collected from Westmoreland, Inc, for coal mined on the so-called Ceded Strip on which the federal government held the mineral rights in trust for the Tribe (see the July 1997 issue of *THE INTERIM* for prior coverage). The Supreme Court decided on October 14 to review an order by the Ninth Circuit Court of Appeals directing the state and Big Horn County to provide restitution of the taxes to the Tribe. The legal issue to be settled is whether the Montana coal taxes unjustly enriched Montana and whether the Tribe as a third party is entitled to restitution of the taxes. A ruling on the case is expected in June or July 1998. If the Supreme Court affirms the lower court's order, Montana and Big Horn County will have to find several hundred millions of dollars to pay principal and pre- and post-judgement interest to the Tribe. Clay Smith, Solicitor, Office of Attorney General, informed the Committee that the Supreme Court had earlier declined to review a petition filed by the Tribe seeking restitution for economic damages related to the imposition of the taxes. The high court is also reviewing cases involving the state taxation of Indian tribal property in Alaska, Michigan, Minnesota, and South Dakota.

Department of Revenue Reviews Liquor Laws and Restaurant Beer and Wine Rules...Mary Bryson presented a discussion paper that identified three topics related to liquor licensing: undisclosed financial interest in a liquor license, transfer of ownership in a liquor license, and proposed violation guidelines. The Montana Alcoholic Beverage Code prohibits a nonresident from owning a retail alcoholic beverage license. An undisclosed financial interest in an alcoholic beverage license can occur when an out-of-state person arranges with a Montana resident to be the licensee of, for example, a motel or hotel owned by the out-of state person. The "arrangement" may preclude the resident licensee from having an equity interest in the license and may prohibit the licensee from selling it. The Department reviews these situations on a case-by-case basis, but also intends to develop rules that clearly specify the limitations on the relation between a licensee and other entities. Montana law also limits the conditions under which an alcoholic beverage license may be transferred. The Department believes that new rules are required to define the relationships that are allowed between a seller and buyer of a license and between a secured party and borrower. The new rules would address the conditions of sale, joint ownership under a contract for deed, and the limitations on noninstitutional lenders as secured parties. Finally, the Department proposes to adopt rules that would formalize administrative procedures related to license violations. Bryson told the Committee that the Department has presented the discussion paper to the Montana Tavern Association

and intends to prepare additional discussion papers to address issues, legislation, and other matters related to alcoholic beverage licensing.

During the 1997 Session, the Montana Legislature enacted Senate Bill No. 354 (Ch. 465), the so-called cabaret bill. The legislation establishes new beer and wine licenses that allow restaurants to serve beer and wine to customers. The new licenses may not be used in conjunction with gambling. Jeff Miller, Administrator, Department of Revenue, presented proposed rules and a series of questions and answers that provide information to prospective applicants for the new licenses. Miller also presented a status report on the number of applicants received from communities throughout the state. As of October 8 the Department had received 121 applications. Because SB 354 established a quota system, new licenses will be awarded by lottery in those communities in which the number of applicants exceeds the quota. According to the status report, lotteries will be required in Missoula, Helena and East Helena, Bozeman, West Yellowstone, Kalispell, Whitefish, and Libby.

Federal Windfall Profit Tax...The federal Taxpayer Relief Act of 1997 (HR 2014) was signed into law on August 5, 1997. Some of the significant provisions of the Act include a \$400 child tax credit for tax year 1998 that increases to \$500 thereafter, tax rate reductions for capital gains, various tax credits for educational expenses, and revisions to individual retirement accounts, including expansion of eligible withdrawals (e.g., penalty-free withdrawals for expenses for higher education). Because Montana individual income tax law is tied to federal law, changes at the federal level can affect state revenue collections.

Dave Lewis, state budget director, asked the Department of Revenue to develop preliminary estimates of the state revenue impact caused by changes to federal tax law. Mary Bryson presented a report to the Committee. According to the report, the most significant impact will come from changes to the taxation of capital gains. The Department estimates that state income tax collections from capital gains, absent changes in state tax law, may increase by about \$29.6 million for the 1999 biennium and by about \$17.9 million for the 2001 biennium. Increased tax collections would occur in two areas. First, lower capital gains tax rates would reduce federal income tax liability which in turn would result in a smaller state itemized deduction for federal taxes. Second, increased capital gains realizations (assuming a change in taxpayer behavior) would lead to higher state taxable income. Increased realizations would account for most of the estimated increase in state revenue. However, the magnitude of the estimate is problematic because it is difficult to assess the extent of increased realizations due to lower tax rates. The next largest impact, again resulting from a smaller deduction for federal income tax liability, would be the child tax credit. Because the credit is available beginning in 1998, the state revenue impact would not be evident until the 2001 biennium. The Department estimates that the child tax credit would increase state tax collections by about \$6.9 million during the next biennium. The revenue impact of the other provisions would be relatively insignificant. Additional analysis will be needed to refine the estimated impacts.

Other Committee Business...Jim Royan, Vice Chairman of the Montana Coal Board reported on legislative funding for the coal-related fiscal impacts. Don Hoffman,

Department of Revenue, informed the Committee that the Department is working with the oil and natural gas industry to simplify oil and gas production taxes. Dean Roberts and Brenda Nordlund, Department of Justice, discussed the proposed rules for the new method of taxing passenger vehicles and for imposing a fee in lieu of tax on heavy trucks and buses. Staff informed the Committee that the Legislative Audit Committee will be looking at developing a flat fee proposal for passenger vehicles later in the interim. Terry Johnson, Legislative Fiscal Division, summarized state general fund collections for FY 1997. Collections were about \$6 million less than anticipated. Although individual income taxes and corporation license taxes came in a little higher than expected, the shortfall is attributable to several of the smaller sources of revenue. Dave Woodgerd, Chief Legal Counsel, Department of Revenue, presented a litigation report. One of the more significant cases involves an additional \$40 million coal severance tax assessment against a coal company. The State Tax Appeal Board upheld the Department's additional assessment, and the coal company has appealed to State District Court.

Next Meeting Set for November 21...The Revenue Oversight Committee will meet at 9 a.m. Friday, November 21 for a half day in Room 104 of the State Capitol. Although the agenda has not been set, the Committee will focus on the tax analysis of the electric and natural gas industries. The Revenue Estimating Subcommittee is tentatively scheduled to meet the same day after lunch in Room 104. The Subcommittee will review revenue estimating profiles associated with business taxes.

COMMITTEE ON CHILDREN AND FAMILIES

Committee Tries New Approach...You are on the floor of the House after an exhausting interim during which all of your spare time was spent delving deeply into taxation, electric utility restructuring, or perhaps transportation spending. You can fire off without hesitation specifics of Montana's property tax structure and know all of the state's electrical cooperatives by name. With your busy interim schedule and all the demands on your time, you have given little, if any, thought to mental health managed care, children's health insurance, services for the disabled, pregnant teenagers, and youth substance abuse.

A bill appears on your desk requested by the Joint Oversight Committee on Children and Families that appropriates money for the state's children's health insurance grant match. You look around the room. "Children and Families," you say to yourself, "Who was on that Committee? Who can I trust to give me the straight dope? How do I vote? What does this mean?"

No legislator can know everything there is to know about every issue facing the state at any given time, but with the help of this interim's Committee on Children and Families, legislators of the 56th Session will be given a bipartisan "leg up" on child and family issues.

The wide range of concerns brought before the Committee on Children and

Families at its first meeting has prompted the Committee to try a somewhat different approach to its work this interim. Followers of the Committee's activities will recall that previously, members have chosen a specific study topic on which to focus its energies. Last interim, for example, the Committee chose to concentrate on child care. This time around, instead of one all-encompassing issue or problem, in addition to its oversight responsibilities, the Committee has agreed to tackle three or four topics each meeting, inviting the people who presented their "wish lists" at the first meeting to return and bring with them solid data to support any suggested legislation or other product the Committee may endorse. The Committee will then make decisions on whether (and how) to support each of these topics with an eye on the final product.

Committee to Create Guidebook...The working title of the Committee's final product is "A Legislator's Guide to Child and Family Issues". The Committee will gear this document toward legislators with little to no experience in the human services arena, providing fact sheets and background information to accompany the legislation, letters, or other recommendations of the Committee. Physically, this guide will differ from the final reports legislators are used to seeing. The Committee's goal is to make the guide "user-friendly", so that when a child and family-related issue arises on the floor, a legislator will be able to quickly turn to the appropriate section of the guide and pull out the relevant information for perusal.

This approach is somewhat experimental, so comments and suggestions are welcome during the interim and upon publication of the guide. The Committee will be striving to provide useful, accurate information along with its recommendations, so that legislators can make informed decisions when the time comes to choose red or green.

Committee to Meet in November...The Committee will meet next on November 13 and 14 in Helena. The meeting on November 13 will begin at 10:30 a.m. in Room 437 of the State Capitol. On November 14, the Committee will have the opportunity to tour of the Department of Public Health and Human Services' (DPHHS) "Human Services Pavilion", a virtual department developed by the Department's Operation and Technology Division. The demonstration on the 14th will begin at 8:30 a.m. in the 3rd floor conference room, DPHHS, 111 Sanders. Following the approximately 1-hour presentation, the Committee will move back to the Capitol, Room 437, for the remainder of the day.

For further information about the Committee or the November meeting, please contact Leanne Kurtz, Legislative Services Division, at 444-3064 or by e-mail at <lkurtz@mt.gov>.

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Committee Awards Contract...The Committee on Public Employee Retirement Systems (CPERS) is moving full-steam ahead towards the modification or replacement of the current Public Employees' Retirement System (PERS), which is the largest of the statewide public employee retirement plans covering more than 27,800 state, university-system, county, city, and school district classified employees and a \$600 million annual payroll.

At its October 2 meeting, CPERS awarded a \$60,000 consulting contract to Actuarial Sciences Associates, Inc., (ASA), an AT&T company headquartered in New Jersey that specializes in designing employee benefit plans and in providing actuarial services. The consulting contract calls for ASA to provide CPERS with four reports. The first report requires an assessment of the retirement goals and interests of the employees, employers, retirement board, and legislators; an analysis of how well the current PERS meets those goals and interests; three alternative plan design options for changing PERS; an analysis of the advantages and disadvantages of each option; and finally, recommendations.

Committee to Hold Two Meetings in November...To assess employee and employer retirement goals and interests, CPERS will be conducting two public meetings in November. The first public meeting will be held on Thursday, November 13 from 7 p.m. to 9 p.m. in the Department of Public Health and Human Services auditorium at 111 Sanders in Helena. METNET sites in Dillon and Missoula will be included in the Helena meeting.

The second public meeting will be conducted in Billings on Saturday, November 15 from 10:30 a.m. to 12:30 p.m. at MSU-Billings, Room 162 of the Special Education building. METNET sites in Havre, Miles City, Bozeman, and Great Falls will be included in the Billings meeting.

Public participation, especially from the employees and employers who will be directly affected by changes to PERS, is strongly encouraged. Input from all interested parties is vital to setting the proper course for changes to the largest public employee retirement plan in the state. Meeting participants will be able to voice their concerns, expectations, and questions to the members of CPERS and to ASA's consulting team about how well the current PERS is meeting needs now, about areas of concern with PERS, and about what types of changes to PERS should or should not be considered.

ASA to Conduct Interviews...ASA will also be interviewing the PERS board and CPERS members to assess their policy goals and concerns related to PERS. ASA's discussion with CPERS members will be held in Helena on Friday, November 14 beginning at 9 a.m. in Room 104 of the State Capitol. ASA's interview with retirement board members will be held in Billings after the November 15 public meeting and will begin at 2 p.m. in the Missouri Room of the MSU-Billings Student Union building. Both meetings are open to the public.

Following these meetings and interviews, ASA will begin setting up employer and employee focus groups. Six focus groups will involve a representative cross-section of public employees and will examine employee priorities and concerns related to their retirement plans. Three focus groups will involve a cross-section of selected public employers and will examine employer priorities with respect to their participation in PERS and employee issues from the employers' perspectives. These focus groups are slated to begin the week of December 8.

ASA's analysis, options, and recommendations for changes to PERS are due to CPERS by January 23 and will be formally presented at CPERS' February 5 meeting in Helena.

For further information, please contact Sheri Heffelfinger, Legislative Services Division, at 444-3064 or by e-mail at <sheffelfinger@mt.gov>.

CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE

Committee Tours State Prison...The Committee on Correctional Standards and Oversight met October 2 and 3 in Deer Lodge. On October 2, the Committee toured the Montana State Prison and the Boot Camp. The Committee heard presentations on classification, housing, security procedures, medical services, educational programming, industries, recreation, and religious facilities.

The October 3 meeting agenda included an update on the Southwest Montana Multi-Jurisdictional Detention Center and the various contracts that the Department of corrections has with county jails, and out-of-state prisons. The Committee also received an update on the progress of the administrative rules and request for proposals for a private prison in Montana pursuant to House Bill No. 83.

Committee Holds Conference Call...The Committee held a conference call on October 17 to consider a letter of preference between the Department of Corrections and the Butte/Silver Bow and Anaconda/ Deer Lodge consolidated governments regarding placement of adult male inmates in a future multijurisdictional detention facility. Although the Committee had no legal authority in the matter, the principals of the proposal desired the letter of preference in order to secure funding for the project, and the Department desired an indication from the Legislature as to whether the facility met legislative intent. The Committee voted five to three in favor of supporting the letter of preference. The letter would give the multijurisdictional detention facility a preference of placement for adult male inmates after the Montana State Prison system, including the Warm Springs campus, reaches emergency capacity and the contractual obligations with the regional correctional facilities in Great Falls, Glendive, and Missoula have been met.

Committee to Tour Women's Prison...The next Committee meeting will be

November 7 in Billings at the Montana Women's Prison. The Committee will tour the facility, which includes the Intensive Supervision Program, and receive information on the long-range building and five-year plans for the women's correctional system.

The future plans for the Committee include meeting the afternoon of January 22 in Boulder to tour the new juvenile girls' facility and January 23 in Helena to hear the long-range building and five-year plan for the male correctional system.

Subcommittees Continue to Meet...The Private Prisons Subcommittee met October 24 with some of the members of the Ad Hoc Committee on Sentencing. The Subcommittee explored alternative programs for chemically dependant inmates and sex offenders and received a briefing on restorative justice programs for youth in Montana.

The next meeting of the Jail Standards Subcommittee will be in conjunction with the Montana Sheriffs and Peace Officers' Association on November 13 and 14 in Billings.

The Juvenile Issues Subcommittee and the Planning and Projections Subcommittee may also be meeting in mid- to late-November.

If you need additional details on subcommittee meetings or are interested in being placed on the interested persons list for the Correctional Standards and Oversight Committee or any of its subcommittees, please contact Susan Fox at 444-3064 or by e-mail at <sfox @mt.gov>.

LEGISLATIVE SERVICES DIVISION

LEGAL DIVISION

The following ballot measure has been received by the Legal Division of the Legislative Services Division:

- ▶ limit alcohol purchase by DUI offender.

Pursuant to 13-27-202(2), MCA, copies of the correspondence pertaining to the ballot issue are available through the Secretary of State.

INTERIM PROPERTY TAX COMMITTEE

Interim Property Tax Committee Heads for the Southwest...The Legislature's Interim Property Tax Committee, created by Senate Bill 195, will meet in Dillon and Butte on October 30 and 31, respectively. The Committee will hold a work session on the afternoon of October 30 at Western Montana College of the University of Montana and will conclude the day's work with a public hearing the evening of the

30th. During the work session, the Committee will continue its review of historic trends in property taxation, this time looking more intently at trends in mill levies and the effects of inflation. In addition, the Committee will be briefed on the property tax systems in surrounding states, including ND, SD, WY, ID, WA, and OR. The other major agenda topic will be a seminar, conducted by DOR staff for the benefit of the Committee, on the principles and practice of property valuation.

Subsequently, testimony and comments from locally-elected officials and from DOR field staff will be heard. The day will conclude with a public hearing, also at WMC/UM focused on the challenges and problems that have resulted from rising market values, legislative actions, voter initiatives, changes in the state's and local economies, federal mandates, and so forth faced and that are faced by local governments. The work session will be the Committee's third such session of an anticipated 11 meetings.

Following the meeting of the Committee in Dillon and Butte, the Committee will travel to Hamilton and Missoula on December 11 and 12, respectively. On January 29, the Committee will meet in Lewistown, and from there continue its journeys for the remainder of the interim. Future venues will be announced in forthcoming issues of *THE INTERIM* newsletter. Legislators from within the general geographic area of future meetings will receive individual notice of the meetings.

Committee to Begin Considering Options...In January, Committee members will begin to propose options for revising, reforming, or replacing the property tax system for consideration by the full Committee. The "options proposal and consideration" phase of the study will continue through June, with the study and the Committee's activities concluding in September 1998.

For further information, including a schedule of Committee meeting dates and cities, please contact the Legislative Services Division at 444-3064.

COMMITTEE ON STATE MANAGEMENT SYSTEMS

Committee to Meet in November...The Committee on State Management Systems will meet on November 18 at 9 a.m. in Room 104 of the State Capitol. Items on the draft agenda include updates on the Montana Project to Reengineer the Revenue and Information Management Environment (MT PRRIME) and the activities of the Information Technology Advisory Council (ITAC), including a discussion of desktop software strategic planning. ITAC has held two meetings in the past month to discuss the Department of Administration's decisions and advise the Department on the types of desktop software (e-mail, spreadsheets, word processing, etc.) the state should purchase and support in the next several years.

Also on the draft agenda is an update on the Department of Administration's Information Services Division's (ISD) plans for averting electronic mayhem when the year 2000 arrives, a discussion on the interfaces between state and local

governments, and demonstrations of ways the public can access state government information via the Internet.

Committee members have asked that future Committee meetings be coordinated with those of ITAC to facilitate Committee member attendance at ITAC. The new study plan that will be presented to the Committee on November 18 reflects that coordination, and the Committee will be asked to appoint two members to attend future ITAC meetings.

For more information about the Committee or the agenda, contact Leanne Kurtz at 444-3593 or by e-mail at <lkurtz@mt.gov>.

COMMITTEE ON INDIAN AFFAIRS

Committee Travels to Northern Cheyenne...The Committee on Indian Affairs traveled to the Northern Cheyenne Indian Reservation on October 7 and 8. The purpose of the trip was to tour the Reservation and visit with the Northern Cheyenne Tribe.

On Tuesday, October 7, the Committee met at the Tribal Headquarters in Lame Deer and heard a presentation on the Northern Cheyenne Head Start program. The Committee then visited two Head Start sites where members visited with teachers and aides.

The next stop on the tour was the Lame Deer Public Schools. Up until just three years ago, there was no public high school on the Reservation. Northern Cheyenne students were bused off-reservation to high schools in Colstrip Hardin, and St. Labre Catholic school in Ashland or to the tribal contract school at Busby. Lame Deer High School opened in 1994. The high school is currently housed in modular classrooms and offices near the elementary school. Ground has been broken for a new high school, and construction should begin in the very near future. When construction is completed, the Lame Deer seventh and eighth grades will move from their current home in the gymnasium building to the modular classrooms.

The Committee also visited the tribal contract school at Busby. This is a K-12 facility operated by the Bureau of Indian Affairs under contract with the Northern Cheyenne Tribe. The school underwent some severe financial difficulties in the 1980s and the high school lost its accreditation. In the past few years, however, the school has undergone some positive changes and continues to serve the Northern Cheyenne people.

The Indian Health Service maintains a clinic on the Northern Cheyenne Reservation. In May of 1996, the clinic was destroyed by fire. In July of this year construction was begun on a new facility that should be completed by 1998. The new facility will include an emergency room, laboratory facilities, and a health education unit in addition to the regular clinic operation.

The final stop of the day was the new Chief Little Wolf Capitol Building. The building will house the Northern Cheyenne Tribal Offices, including tribal

administration, tribal council offices and chamber, tribal programs, educational programs, and natural resources. The building is in the final stages of construction and should be ready for occupancy early next year.

Committee Discusses Economic Development...On Wednesday morning, October 8, the Committee met with tribal officials at the Northern Cheyenne Area Chamber of Commerce. The moderator for the discussion was Suzanne Trusler of the Chamber of Commerce and owner of Morning Star Enterprises, the largest minority-owned construction business in Montana.

Currently, economic development activity on the Reservation is primarily resource-based. Ranching is very important, but as with ranching elsewhere, there is concern over an aging population and few young people interested in taking over. Although the Northern Cheyenne are the major ranchers on the Reservation, there is no tribal ranching operation.

Forestry has been a very important economic activity on the Reservation, but forest fires in recent years have devastated this resource resulting in much of the timber being cut as salvage. There is a lumber mill at Ashland operated by the St. Labre Mission. Timber cutting is a significant source of revenue for the tribal budget and employs more Northern Cheyenne than any other employer, save for the federal and school programs.

While the Northern Cheyenne Tribe would like to attract large manufacturing firms to the Reservation, the lack of infrastructure, such as recreational facilities, adequate water and sewer, roads, and housing, pose significant barriers. The Committee agreed to work with state and tribal leaders and private business people to explore the possibility of bringing manufacturing firms to reservations.

Other issues discussed included tribal and state incentives to businesses interested in locating on a reservation, including Indians on state trade delegations to overseas markets, the marketing of Indian art and beadwork, the opening of a First Interstate Bank in Lama Deer, Indian appointments to state boards and commissions, advertisements on reservations for state government jobs, and better training of teachers regarding Indian history and culture.

Committee Hears From Tribal Officials...On Wednesday afternoon, the Committee met at Dull Knife Memorial College to hear presentations from tribal officials on a variety of issues. Among the topics discussed were the impacts of welfare reform, problems with drug and alcohol abuse, the work of the Boys' and Girls' Clubs, tribal sovereignty, and the state-tribal relationship.

Committee to Discuss Impacts of Welfare Reform...The Committee will meet on Thursday, November 6 in Helena to discuss the impacts of welfare reform on Indian reservations. Changes to the federal welfare reform law this past summer eliminated the five-year limit on the receipt of public assistance for recipients living on an Indian reservation with a 50 percent or more unemployment rate. There is a concern that this new provision will serve as a disincentive in assisting Indians to make the transition from welfare to work.

Officials from the state, reservation counties, and tribes have been invited to

make presentations to the Committee. The meeting will begin at 9 a.m. in Room 104 of the State Capitol.

For more information about the Committee or the November meeting, please contact Connie Erickson, Legislative Services Division, at 444-3064 or by e-mail at <cerickson@mt.gov>.

LEGISLATIVE AUDIT COMMITTEE

Audit Committee to Meet in November...The Legislative Audit Committee will meet on Friday, November 7 in Room 104 of the Capitol Building beginning at 8:30 a.m. The Committee will hear reports on the following audits:

FINANCIAL-COMPLIANCE AUDIT

- ▶ Montana State Library Commission (97-21)

PERFORMANCE AUDITS

- ▶ Teacher Certification (96P-09)
- ▶ Medicaid Clinical Laboratory Services payments (97P-02)
- ▶ Water Development Follow-up (97SP-70)
- ▶ Personnel Classification System (97P-08)

ELECTRONIC DATA PROCESSING AUDITS

- ▶ Adult Correctional Informational System (97DP-07)
- ▶ Child and Adult Protective Services Program (97DP-06)

FINANCIAL AUDIT

- ▶ Board of Housing (97-7)
- ▶ Guaranteed Student Loan Program (97-6)

CONTRACT AUDITS

- ▶ Montana State Lottery, Report on Cash Drawings (97C-02)
- ▶ Montana State Lottery, Financial Statements (97C-01)
- ▶ Montana Medical Legal Panel (97C-03)

ENVIRONMENTAL QUALITY COUNCIL

The EQC to Meet in Missoula...The Environmental Quality Council (EQC) will meet on Thursday and Friday, November 13 and 14, in Missoula at the Boone and Crockett Club. EQC Subcommittees will meet on November 13 and the full Council will meet on November 14. The Council will receive an hour and a half training session on

growth management regulatory tools from Martha Colhoun, EQC staff. The Council will attend a Federal District Court hearing on TMDLs. The Department of Environmental Quality (DEQ) will update the Council on its MEPA implementation policy. Subcommittee reports will also be on the agenda.

Subcommittees to Meet...The Waste Tire Working Group will meet Wednesday, November 12. The Water Policy Subcommittee and the Growth Issues Subcommittee will meet Thursday, November 13.

Montana Growth Issues...The Growth Issues Subcommittee will meet on November 13 in Missoula at the Boone and Crockett Club. The meeting is scheduled for 12 p.m. to 5 p.m. The purpose of the meeting is to determine the scope and direction of the Growth Study. Therefore, public comment is encouraged and welcomed. At the Subcommittee's request, staff will provide a compilation of growth initiatives in other Rocky Mountain states, a summary of the growth issues that the EQC identified and prioritized in September, and an inventory of what information various state agencies provide. The Subcommittee also plans to finalize a survey to send out to counties to determine what growth issues, if any, the counties are grappling with.

To take advantage of the Missoula forum, there will be a panel discussion of community-wide techniques that counties are currently using and what techniques work and don't work. Missoula Mayor Mike Kadas, Missoula County Commissioners, Greg Oliver, Director of Health Promotion for the Missoula City-County Health Department, Colleen Dowdall, Assistant County Attorney, and Tim Schwecke from the Ravalli County Planning Department will participate in the panel from 1:30 p.m. to 3:30 p.m.

For more information, contact Martha Colhoun, Legislative Environmental Policy Office, at 444-3742.

Water Policy...The Council's Water Policy Subcommittee will be meeting from 3 p.m. to 9 p.m. on November 13 at the Boone and Crockett Club in Missoula. They will be briefed on instream flow policies in Montana (in preparation for a Council update from three instream flow programs the following day). The remainder of the Subcommittee meeting will focus on implementation of HB 546 (the "TMDL" bill), which refined the directives to DEQ regarding the assessment of the quality of the state's waters, as well as the addressing of water quality problems discovered. The state has documented water quality problems in over 800 rivers and lakes; HB 546 gave DEQ 10 years to implement strategies to address these problems. The Subcommittee will undergo a basic informational session on HB 546, then a panel will discuss various water quality improvement efforts in the state. The last topic will include an investigation of issues surrounding the relationship between non-point-source water pollution and TMDL implementation in the Clark Fork watershed.

For more information, contact Kathleen Williams, Legislative Environmental Policy Office, at 444-3742.

Waste Tire Study....The Waste Tire Working Group has scheduled its next meeting for November 12, at 9 a.m. in Room 108 of the State Capitol. EQC staff is gathering information on tire landfilling costs; feasibility costs of tire shredding, slicing, baling, shipping, and other processing methods; as well as information on other management alternatives from states with similar population and recycling marketing circumstances as Montana's. A summary of tire management alternatives currently available in the state will be presented along with additional research on other possibilities at the upcoming working group meeting

For more information, contact Larry Mitchell, Legislative Environmental Policy Office, at 444-3742.

Compliance and Enforcement Reporting...The Council's Compliance and Enforcement Reporting Work Group has reviewed a proposed reporting format for the environmental compliance and enforcement reporting mandated by passage of HB 132 last session. The reporting is scheduled to occur in September of 1998 and will include assessments from 25 different state environmental programs on the status of environmental compliance in Montana, as well as program activities, successes, and challenges in promoting compliance with Montana's environmental laws. In addition to the reporting mandated by HB 132, state program staff will also respond to questions regarding the 30+ general recommendations included in the Council's "Compliance and Enforcement Final Report to the Legislature" in 1997.

To Meet Again in January....The next EQC meeting is tentatively scheduled for January 8 and 9.

For more information please contact the Legislative Environmental Policy Office at 444-3742 or via e-mail at <teverts@mt.gov>.

TRANSITION ADVISORY COMMITTEE

TAC Meets in Billings...The Transition Advisory Committee on Electrical Industry Restructuring (TAC) held its second meeting of the interim on October 6 and 7 in conjunction with the annual convention of the Montana Electrical Cooperatives Association (MECA). The meeting included separate panel presentations on the historical evolution of the electrical industry and low-income energy assistance programs, as well as a report on fuel cell research and potential applications of this technology in Montana. MECA representatives were on hand to provide TAC members with insights on the options and expectations among its 26 member co-ops.

The TAC members who represent industrial consumers, the investor-owned

utilities, the power marketing industry, Indian tribes, conservation interests, the Public Service Commission (PSC), and the Consumer Counsel provided updates on relevant activities. Montana Power Co. has initiated a series of biweekly meetings with other interested parties for the purpose of hammering out a consensus on basic principles that will apply to customer education and pilot programs, both of which are required by the restructuring legislation, SB 390. The Committee heard from the PSC and others that the issue of stranded costs (an important component of the transition plan filed by Montana Power with the PSC) might result in litigation, because MPC and others interpret SB 390 differently, and because various parties' calculations of stranded costs are substantially disparate.

TAC Makes Important Decisions...The TAC made several important decisions at this meeting:

- ▶ to adopt a quarterly newsletter as both a reporting mechanism and a means of further educating TAC itself and the Legislature as a whole;
- ▶ to establish two subcommittees--one on education, the other on universal systems benefits programs(USBP); and
- ▶ to establish two "liaison groups"--one between TAC and the Revenue Oversight Committee (ROC), the other with the Public Service Commission.

The membership of each of these subcommittees and liaison groups is available from Legislative Services staff. Todd Everts will assist the USBP subcommittee and the PSC liaison group; Stephen Maly is assigned to the education subcommittee and the ROC liaison group. Meeting dates and places have yet to be decided.

Finally, the legislative members of TAC voted to refer a question regarding funding support for a study of the tax implications of restructuring to the Legislative Council. (At its October 13 meeting, the Council endorsed a \$15,000 allocation to this study, which will be conducted under the auspices of the Revenue Oversight Committee, and will doubtless constitute a vital part of the Legislature's monitoring and oversight of the transition to retail competition in the electricity market.)

For further information on the Transition Advisory Committee, contact Todd Everts or Stephen Maly at 444-3064.

GAMBLING STUDY COMMISSION

Commission Prepares RFP...The Gambling Study Commission held its second meeting on October 2, primarily for the purpose of refining the contents of a request for proposals (RFP) for a comprehensive study of the social and economic effects of gambling in the state. After considerable deliberation of the questions the Commission would like a qualified contractor or consultant to find answers for via a rigorous and

credible methodology, the members authorized staff to issue the RFP and establish a schedule of events prior to and subsequent to selecting the study team.

The RFP was issued on October 14 to approximately 30 parties who identified themselves as interested in preparing a bid. Proposals are due December 8. The next scheduled Commission meeting is December 11 at the State Capitol in Helena.

For additional information about the Commission and the Request for Proposals, contact Stephen Maly, Legislative Services Division, at 444-3064 or by e-mail at <smaly@mt.gov>.

LEGISLATIVE FINANCE COMMITTEE

LFC Meets in October...The Legislative Finance Committee (LFC) met on October 2 and 3. Highlights of selected reports heard are presented below.

State Fund Operating Plan...The Committee heard a presentation by Carl Swanson of the State Compensation Insurance Fund that included a fund operational overview, financial results, the staff "pay for performance" program, the fund fiscal 1998 budget, and old fund liability tax termination projections. It was reported that the adequacy of the old fund is based on an actuary's estimates and will require a certification by the Governor's budget director to the Department of Revenue on fund adequacy as required in Senate Bill 67. The report provided a range but no specific estimate of the adequacy of the old fund. The Committee requested further information from State Fund personnel at the Committee's December meeting. Further, the LFC voted to send a letter to the State Fund board of directors expressing concern about the payment of over \$40,000 in "pay for performance" incentive bonuses to State Fund managers.

Internal Services Rate-Setting Methodology...The LFC heard a report by Bob Tallerico, Legislative Fiscal Division (LFD), on the new responsibility of the Legislature to establish rates and fees for "proprietary" operations providing internal services to other state agencies. The report identified concerns over the adequacy of information provided to the 1997 Legislature and the difficulty of making such information "user friendly". The Committee directed LFD staff to form a partnership with the Governor's Budget Office to seek improvements in the data provided to assist the Legislature in the budget decision process. A subcommittee was formed to work with staff to develop a recommendation for the full Committee. Subcommittee members are Representative Zook (chairman), Representative Peck, Senator Franklin, and Senator Swysgood.

Fiscal Issues for the Montana University System...The LFC heard a report from MUS Commissioner Richard Crofts on the University System, with emphasis on the lump-sum appropriation for the units. Funds included in the allocation include the

general fund, millage, and anticipated interest earnings in House Bill 2. The Commissioner reported that the \$1 million initially allocated by his office for funding of distance learning was changed by the Board of Regents to include approximately \$400,000 for distance learning, and to use the remaining \$600,000 for allocation to smaller units to meet plans and obligations under faculty collaborative agreements. The LFC requested specific faculty productivity factors from the Commissioner. They further requested a cost-benefit analysis on the decision of the University System to develop a separate accounting and management system versus adopting systems developed for other state agencies by the MT PRRIME project. The Committee voted to send letters to the Board of Regents and the Postsecondary Education Policy and Budget Committee encouraging University System full consideration of participation in MT PRRIME systems development and integration.

Federal HUD Funding...The Committee heard a report by Commissioner Pat Haffey of the Department of Labor and Industry of recent notification by the federal government that the Montana Fair Housing Law does not provide substantial equivalency to the federal Fair Housing Act. Therefore, the Department does not expect to receive the federal funding originally budgeted by the 1997 Legislature to investigate housing discrimination complaints. Commissioner Haffey expressed commitment to an effort to fulfill the obligations of Senate Bill 350 even with the reduced funding level.

Fiscal Issues and Status of Other Interim Studies...The Committee heard reports on fiscal issues related to several other interim studies that are being supported by LFD staff. These include the committees on Correctional Standards and Oversight, Interim Property Tax, Postsecondary Education Policy and Budget, Revenue Oversight, Revenue Estimation Procedures, Transportation Funding Study, and State Management Systems.

Mental Health Managed Care...The Committee heard a report from the Department of Public Health and Human Services (DPHHS) and the contractor on the status of the current contract for Mental Health Managed Care. The LFC has a statutory obligation to monitor the status of the mental health access plan and has exercised oversight of the plan since its inception, including input to the development of the contract request for proposal. The Committee expressed concern over the controversy regarding the initial management of the plan, and was provided a summary of efforts being initiated to address current deficiencies/complaints. DPHHS has established a toll-free line to receive complaints regarding administration of the plan. Both the contractor and the Department expressed confidence that initial problems would be overcome. The Committee expressed its intent to closely follow the plan and to receive frequent updates on the status of the effort.

Fiscal 1997 General Fund Revenues and Fund Balance...Terry Johnson of the LFD staff presented a report on preliminary fiscal 1997 general fund ending fund balance data. The report indicated the ending fund balance was \$21.5 million, or \$3.3 million below the level anticipated by the 1997 Legislature. Revenue collections were

\$6.1 million below the estimated amount, but was more than offset by general fund disbursements that were \$4.9 million below anticipated levels. Higher than expected reversions contributed to the lower expenditures. Accounting adjustments to the fund balance also reduced the anticipated balance by \$4.1 million.

The impact of the lower than anticipated balance for fiscal 1997 on the 1999 biennium projection is a reduction of \$5.6 million from 1997 session projections to \$18.9 million. The revised balance incorporates actual revenue and disbursement data for fiscal 1997 and continuing appropriation authority from fiscal 1997 to 1998. All other assumptions are based on HJR 2 revenue estimates and appropriations adopted by the 1997 Legislature. The projections do not include the potential revenue impacts of federal tax reform, nor do they include the impact of reduced institution reimbursements, which may reduce 1999 biennium revenues by \$9.5 million. The LFC requested a staff report on the reduced institutional reimbursements in fiscal 1997 and the potential impact in the 1999 biennium. The staff will also provide an estimate of the impacts of federal tax reform on 1999 biennium revenues.

MT PRRIME...The LFC heard an LFD staff report on MT PRRIME, which will expend over \$16 million for the replacement of the state's core management information systems, including the Statewide Budget and Accounting System, human resource systems, and the state budget system. The real significance of MT PRRIME is its long-term impact on the way the state accounts for its financial and personnel transactions, and it is a one-time opportunity to ensure the systems meet the current and future needs of the state and the Legislature for fiscal accountability. The Committee was informed of the intent of LFC staff to commit significant resources to this effort, particularly in the development of a budget development system, and to ensure that the interests and intent of the Legislature for fiscal accountability are represented. The staff will provide periodic updates to the Committee as the project progresses, and will raise fiscal issues that may develop and that may be of interest or concern to the LFC.

SUBCOMMITTEE ON DEDICATED REVENUES AND STATUTORY APPROPRIATIONS

Subcommittee Meets for First Time...The Legislative Finance Committee (LFC) Subcommittee on Dedicated Revenues and Statutory Appropriations had its first meeting of the interim on October 1. This Subcommittee is tasked to address statutory review requirements enacted by Senate Bill 378 in the 1993 session. The Subcommittee will be reviewing revenue dedications and statutory appropriations to determine if they still reflect legislative priorities and make recommendations to the full Committee. Subcommittee members are Representative McCann (chairman), Representative Vick, Senator Jergeson, and Senator Jenkins. Senator Grosfield (sponsor of SB 378) is an ex-officio member. The LFD staff for the Subcommittee are

Roger Lloyd and Bob Tallerico.

At the first meeting, statutes under which the Subcommittee will be operating were reviewed with a focus on the statutory requirements of the LFC. The actions of the last interim subcommittee and its recommendations to the LFC were also reviewed and discussed. The resulting legislation sponsored by the LFC and enacted by the 1997 Legislature (House Bill 166) and its accomplishments, in terms of de-earmarking revenue dedications and elimination of statutory appropriations, were also discussed. The Subcommittee approved a draft work plan and assigned staff a number of tasks to complete in preparation for the next meeting.

To Meet in December...The next meeting of the Subcommittee will be December 3 at 2 p.m. in Room 104 of the State Capitol. The meeting will primarily consist of summary presentations by staff on revenue dedications and statutory appropriations.

POSTSECONDARY EDUCATION POLICY AND BUDGET COMMITTEE

PEPB Committee Meets...At its October 20 meeting the Postsecondary Education Policy and Budget Committee (PEPB) addressed public service/research agency mission and relevant statutory provisions and heard reports on two-year education and lump-sum funding.

Two-year Education Executive Action...After discussing two-year education issues, the PEPB passed motions requesting that:

- ▶ the community college presidents provide the Committee with their positions on merging with the University System and the pros and cons of such a merger;
- ▶ research be done concerning the impact of implementation and subsequent elimination of state funding for non-beneficiary students in tribal colleges;
- ▶ further research be done on college of technology and community college funding issues; and
- ▶ further research be done on the relative levels of tuition compared to property tax support at the two-year colleges.

Lump-sum Funding...The PEPB discussed lump-sum funding issues, including enrollment estimates, distribution of the lump-sum appropriation by unit and program, instruction dollars allocated per student FTE, and University System accountability. The PEPB then requested current faculty productivity data and requested that the University System provide measures demonstrating accountability for the lump-sum appropriation.

PEPB to Meet in December - The Committee's next meeting will be December 12 at 9 a.m. The tentative agenda includes a report on costs of education and student aid and continuing discussions of public service/research agency issues and accountability measures.

TRANSPORTATION FUNDING STUDY COMMITTEE

Committee Meets in October...The Transportation Funding Study Committee met on October 20 in Helena. A number of presentations were heard by the Committee.

Cindy Weaver, LFD staff to the Committee, presented an updated cash flow analysis of the highways special revenue account. The report included a projection that the cash balance in the highways account will drop to \$8.9 million by the end of fiscal 1999. This amount is significantly below the historically maintained minimum cash balance in the account of \$20 million. The cash flow analysis indicates a \$56 million negative cash flow in the account over a 4 year period (fiscal 1998 through 2001), due to expenditure levels in excess of projected revenues, with the account forecast to go negative in fiscal year 2000. The report also provided a brief history of legislative actions intended to stabilize the account in previous biennia.

Committee Hears From MDT...The Committee heard various presentations by the Department of Transportation (MDT) which included summary information on revenues and expenditures of the highways special revenue account, cash management of the account, tax evasion issues, current and potential federal aid funding, and other uses of highways funds. In response to the Committee's inquiries, the Department also presented information on the "2006 Plan" as proposed by the executive in the 1997 legislative session.

Committee Discusses Highway Patrol Funding...Dave Lewis, the Governor's budget director, responded to the Committee's request to hear the executive's position regarding continued funding of the Highway Patrol from highways special revenue funds. Mr. Lewis indicated that although the executive had made a proposal in the 1995 legislative session to switch the funding of the Highway Patrol from the gas tax to the general fund beginning in fiscal 1998, this measure was not proposed in the 1997 legislative session due to other pressures on the general fund. He further indicated that the executive may consider switching the funding of the Highway Patrol to the general fund in the 2001 biennium in the event that sufficient revenues become available.

At the August 18 meeting, the Committee requested a legal opinion regarding the diversion of restricted highway funds. Tim Reardon, staff attorney for MDT, and Greg Petesch, Legal Services Director each provided a legal opinion regarding the constitutional protection of fuel tax revenues and the defined uses of those revenues. In general, the legal opinions concluded that current uses of funds are within

constitutional authority. Specifically, as it relates to enforcement of highway safety, funding of the Highway Patrol is a constitutionally defined use of fuel tax revenues. Article VIII, section 6, of the Montana Constitution states:

"Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature."

To Meet in January...The next meeting of the Transportation Funding Study Committee is tentatively scheduled for January 26.

THE BACK PAGE

One of the goals of the interim Correctional Standards and Oversight Committee is to be able to come to the 1999 legislative session with a better understanding of correctional issues and programs. This is not an easy task, but it is an important one. To that end, this month's **"The Back Page"** is intended to help educate readers in the complex area of corrections.

A PRIMER ON CORRECTIONS

By Susan Byorth Fox, Research Analyst
Legislative Services Division

INTRODUCTION

In 1996, Montana incarcerated 225 persons per 100,000 population. This compares to a lower rate in North Dakota of 96 per 100,000 and Minnesota of 108 per 100,000 and a higher rate in South Dakota of 255 per 100,000, in Idaho of 281 per 100,000, and in Wyoming of 284 per 100,000. The state average in the United States is 352 per 100,000. This illustrates that it could be worse, and population projections for the future based on past years would indicate that it is going to get worse.

There is some animosity in state government over the increases that the Department of Corrections (Department) received in the appropriations process during the 1997 legislative session. The Department's budget for the 1999 biennium is \$154,401,248 of general fund money, an increase of \$48,481,270 or 45.77% from the 1997 biennium. The Department's appropriation is 7.8% of the total state general fund budget. With the correctional population numbers mentioned above looking to, at the very least, remain steady and to most likely increase, the Department will continue to vie for state dollars with all other programs. With a system of such complexity and magnitude, it is vital to bring understanding to the legislative process, not only for budgeting and long-range building purposes, but also for policy development.

Corrections is the component in the criminal justice system that involves probation, incarceration, and parole. The Department is the executive branch agency that administers these programs. The Department does not have initial control over who comes to the corrections system; that is determined by personal behavior and the judgment of the courts. The length of time that a person stays in the system and the portion of the system that they are controlled by is also determined by the courts in the form of the sentence. Another administrative body, the Board of Pardons and Parole (Board), determines when an inmate can move from incarceration to parolee status, if ever.

PROBATION AND PAROLE

"Probation" is a form of disposition under which the court suspends or defers either all or a portion of a sentence. This allows a person to remain in the community under supervision by the Department. "Parole" is a release of an inmate from incarceration to the community before expiration of the prison sentence under conditions imposed by the Board and subject to supervision by the Department. Parole eligibility is determined by statute as being at least one-fourth of the prisoner's full term or, if a person is serving a life sentence, until the prisoner has served 30 years (46-23-201, MCA).

The Board is a three-member quasi-judicial board appointed by the Governor that is administratively attached to the Department. The Department cannot interfere in the Board's decision to parole or not to parole. The Department provides assistance to the Board by employing institutional probation and parole officers that assist offenders in preparing for parole hearings and parole.

Within the Department, the Community Corrections Division employs probation and parole officers who supervise adult offenders in the community in five regions statewide. These officers supervise an average daily population of 5176 adult offenders on probation or parole. The caseload for a probation and parole officer varies according to those supervised. A caseload for a probation and parole officer is approximately 75-85 offenders.

If an offender violates probation, the offender appears before a District Court Judge and a possible consequence is revocation of the suspended or deferred sentence, which may result in incarceration in prison or in a commitment to the Department to be placed in an appropriate correctional program. If an offender violates parole, the offender appears in an administrative hearing before a probation and parole officer to determine probable cause. If probable cause exists, the offender will appear before the Board. The result of parole revocation may include jail time or reincarceration in prison.

The Department also employs juvenile parole officers. Juvenile parole, formerly known as "aftercare", is an administrative decision made by the Department, not the Board. Juvenile probation officers are employed by the Judicial Districts and interface with the Department through juvenile placement of a youth in either a secure correctional facility or out-of-home placement.

INCARCERATION

Incarceration used to mean one thing -- prison. There are now many different kinds of correctional programs and facilities used for incarceration of inmates. To give an idea of the magnitude, the population projection for fiscal year-end 1998 is 2,672 adult males and for fiscal year-end 1999, 3,054 adult males. Montana State Prison and Montana Women's Prison are the primary facilities for incarcerating adult

offenders. The county jails have also become a vital piece in the system, incarcerating inmates prior to their transport to a prison and also holding probation and parole violators in various stages of revocation or pending revocation. The use of county jails to house state prisoners impacts local jurisdictions that are unable to house local offenders and is costly to the state, which has to pay for the beds and for any medical costs, and is costly to the inmates who cannot access education and treatment programming at the prison that may be necessary for potential parole. In order to relieve county jail overcrowding, the Department has contracted with privately-operated prisons across the country under authority provided in 53-30-106, MCA. These private, for-profit facilities have included facilities in various locations such as Texas, Tennessee, and Arizona.

Prerelease centers are another type of correctional facility that has been used to incarcerate inmates for over 20 years. These facilities are operated in Billings, Great Falls, Missoula, and Butte by private, not-for-profit organizations and generally accept male or female inmates who have served time in prison and are preparing for parole. Inmates live in a supervised setting that requires obtaining a job, paying room and board, and receiving additional treatment or education as necessary. The inmates are screened twice, once by the Department and once by the community that is considering accepting the inmate in a prerelease center. These inmates are considered to be a part of the adult institutional population.

Other programs for the adult institutional population include a Boot Camp for adult males, which is now located near the prison in Deer Lodge, and the Intensive Supervision Program (ISP). If an inmate successfully completes the Boot Camp program, the inmate can return to District Court to ask for a reduction in sentence which enables the inmate to return to the community either in a prerelease center or on parole or probation. The ISP is also considered an institutional placement, although it is in the community and is under the intensive supervision of a special ISP probation and parole officer who has a small caseload of about 15 inmates.

NEW INCARCERATION FACILITIES

A new hybrid of correctional facilities is about to come on board, the regional correctional facility. These facilities were authorized by the 1995 Legislature under Title 53, chapter 30, part 5, MCA. They will be owned and operated by local governmental entities. The facility will include a portion that is a county jail to be used to house misdemeanants, persons in pretrial detention, or others traditionally housed in county jails. Another portion of the facility will be a prison, and the county will contract with the Department of Corrections to house state inmates in that portion. The Cascade County facility is scheduled to open in January of 1998, the Dawson County facility is scheduled to open in November 1998, and the Missoula County facility is scheduled to open in September 1999. The Missoula County facility will also contain a juvenile detention portion. These facilities have been funded by the counties with some additional state and federal funds.

House Bill No. 83 (Chapter 511, Laws of 1997) was authorized during this past legislative session. The intent was to regulate the entrance of private correctional facilities into Montana. Administrative rulemaking authority was granted, and the Department was required to proceed with a request for proposals process. The Department is in the process of completing these requirements, and once the process is completed, it may license and contract to house state inmates with a private corporation that may own and operate or operate a facility under Title 53, chapter 30, part 6, MCA. A regional correctional facility is considered a private correctional facility only if it is privately owned and operated or privately operated.

There is yet a different type of facility in the works. This facility would be a multijurisdictional detention facility. This is in essence a jail owned by more than one local governmental entity. The proposal that recently came before the Correctional Standards and Oversight Committee is proposed by the Butte/Silver Bow consolidated government and the Anaconda/Deer Lodge consolidated government. The consolidated governments would own the facility and, through a request for proposal process, would seek a private operator. These facilities are authorized under Title 7, chapter 32, part 22, MCA. Although considered a jail, if the facility can provide programs suitable for inmates who are incarcerated for a long term, the Department has authority under 53-30-106, MCA, to contract with a facility such as this for holding inmates in a prison-like setting. The Department is developing a preference for this facility that would go into effect when the Montana State Prison system is at emergency capacity and the regional correctional facility contracts have been fulfilled. The contract would also require that certain provisions applicable to private prisons would apply to this facility, such as public support and no out-of-state inmates in the portion of the facility for which the state contracts, which is also the case with regional correctional facilities.

CONCLUSION

With the existing and currently authorized correctional facilities and contracts described above, the House Bill No. 83 private prison, and the multijurisdictional detention center, the belief is that the Department would have the flexibility to relieve the county jail overcrowding across the state and to bring Montana inmates back into the state from out-of-state private prisons across the country. Both of these latter projects are depending on market forces to provide financing and the criminal justice system to provide inmates. It remains to be seen whether the financing and proposals come through, but correctional populations have continued increasing every year and there are expected to be enough inmates to fill all of these various facilities for incarceration.

A final product of the Correctional Standards and Oversight Committee will be at least eight legislators and numerous staff with increased knowledge and understanding of correctional issues in general and the Department of Corrections in particular. We invite you to join with us to learn more, after all we are all in this together.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

NOVEMBER

November 6, Committee on Indian Affairs, Room 104, 9 a.m.

November 7, Legislative Audit Committee, Room 104, 8:30 a.m.

November 7, Correctional Standards and Oversight Committee,
Women's Prison, Billings

November 11, Veterans' Day, legal holiday

November 12, EQC Waste Tire Study Working Group, Room 108, 9 a.m.

November 13, Committee on Children and Families, Room 437, 10:30 a.m.

November 13, EQC Growth Issues Subcommittee, Boone and Crockett Club,
250 Station Drive, Missoula, 12 p.m.

November 13, EQC Water Policy Subcommittee, Boone and Crockett Club,
250 Station Drive, Missoula, 3 p.m.

November 13, Committee on Children and Families, Room 437, 9:30 a.m.

November 13, Committee on Public Employee Retirement Systems, DPHHS
Auditorium, 111 N. Sanders, 7 p.m. with METNET sites in Dillon and
Missoula

November 14, Committee on Public Employee Retirement Systems,
Room 104, 9 a.m.

November 14, Environmental Quality Council, Boone and Crockett Club,
250 Station Drive, Missoula

November 15, Committee on Public Employee Retirement Systems, Room 162 in the Special Education Building, MSU-Billings, 10:30 a.m. with METNET sites in Havre, Miles City, Bozeman, and Great Falls

November 18, Oversight Committee on State Management Systems, Room 104, 9 a.m.

November 21, Revenue Oversight Committee, Room 104, 9 a.m.

November 27, Thanksgiving, legal holiday

DECEMBER

December 3, LFC Subcommittee on Earmarked Revenues and Statutory Appropriations, Room 104, 2 p.m.

December 4, Legislative Finance Committee, Room 104, 1 p.m.

December 5, Legislative Finance Committee, Room 104

December 11 and 12, Interim Property Tax Committee, Hamilton and Missoula

December 12, Postsecondary Education Policy and Budget Committee, Room 104, 9 a.m.

December 25, Christmas, legal holiday

JANUARY

January 1, New Year's Day, legal holiday

January 19, Martin Luther King's Birthday observed, legal holiday

January 22, Correctional Standards and Oversight Committee, Boulder

January 23, Correctional Standards and Oversight Committee, Helena

January 23, Committee on Public Employee Retirement Systems

January 26, Transportation Funding Study Committee, Room 104

January 29, Interim Property Tax Committee, Lewistown

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